

STATE OF MICHIGAN
COURT OF APPEALS

In re PAROLE OF GEORGE GARZA TORRES

BAY COUNTY PROSECUTOR,

Plaintiff-Appellant,

v

GEORGE GARZA TORRES and PAROLE
BOARD,

Defendants-Appellees.

UNPUBLISHED

May 19, 2015

No. 323765

Bay Circuit Court

LC No. 14-001001-AP

Before: JANSEN, P.J., and METER and BECKERING, JJ.

PER CURIAM.

Plaintiff appeals by leave granted¹ from an order of the circuit court affirming defendant Parole Board's grant of parole to defendant George Torres. We remand to the Board for further consideration.

I. BACKGROUND

In 1981, Torres was convicted by a jury of five counts of first-degree criminal sexual conduct and one count of second-degree criminal sexual conduct. The offenses involved multiple instances of sex involving his seven-year-old son and five-year-old daughter. In a prior appeal, this Court affirmed Torres's convictions, but amended his minimum sentence for first-degree criminal sexual conduct in accord with *People v Tanner*, 387 Mich 683; 199 NW2d 202 (1972), for a final sentence of 56 years' and 8 months' to 85 years' imprisonment.² Thereafter, when Torres became eligible for parole, he underwent several evaluations, including the

¹ *In re Parole of Torres*, unpublished order of the Court of Appeals, entered October 28, 2014 (Docket No. 323765).

² *People v Garza*, unpublished opinion per curiam of the Court of Appeals, issued February 19, 1987 (Docket No. 77446).

COMPAS³ and the VASOR⁴ risk assessments. He was identified as being at low risk for reoffending.

Torres also attended 47 sessions of sex offender therapy from December 2008 to May 2009. At the conclusion of these sessions, psychologist Kevin Tolsma authored a report regarding his findings. Overall, Tolsma found that Torres's participation in therapy "ranged from marginal to fair." He scored Torres as "fair" or "poor" on several criteria that were determinative of the efficacy of the therapy. Tolsma's report also contains several disturbing admissions by Torres. For example, Tolsma wrote that Torres had trouble with empathy and "routinely used phrases such as, 'I might have gone too far' or 'Now Im [sic] the one paying for the crime' while failing to take into consideration how he negatively impacted others." Torres had also admitted "that he began having sexually deviant thoughts about children while watching children's television programming." He admitted that he thought he had been making his children stronger by "teaching them about sex." Despite acknowledging that this thought was incorrect, ultimately, Torres was "unable to identify how his offense [sic] negatively impacted his son and daughter." Tolsma diagnosed Torres with pedophilia.

As part of his therapy, Torres prepared a "Relapse Prevention Plan," which required him to assess his "internal and external risk factors" Regarding Torres's self-assessment, Tolsma wrote:

Regarding internal factors he identifies having sexual fantasies about children, believing that sexually acting out is not wrong unless others find out about it, desiring to control others, and believing that no one cares what he does. His corresponding interventions include stopping sexually deviant thinking, taking responsibility for his actions, and using social supports. Externally, he indicates places where children tend to gather and not controlling his behaviors. He intends to counter these factors through using simple avoidance, being in the presence of another adult (when possible) when he goes into public, and going over his [Relapse Prevention Plan] on a regular basis.

Tolsma found that these goals were "realistic and prosocial," although he concluded that the plan "presents with a marginal amount of utility should he decide to use it."

The Board granted Torres parole in 2010. Plaintiff appealed to the circuit court, which found that the Board had abused its discretion. The court noted that the therapy termination report did not indicate that Torres would not become a menace to society if paroled, and concluded that Torres's COMPAS and VASOR scores had been incorrectly assessed. The court

³ COMPAS is an acronym for "correctional offender management profiling for alternative sanctions." See *In re Parole of Elias*, 294 Mich App 507, 520-521; 811 NW2d 541 (2011).

⁴ VASOR is an acronym for "Vermont Assessment of Sex Offender Risk." See *In re Parole of Haeger*, 294 Mich App 549, 564; 813 NW2d 313 (2011).

also found that Torres's parole guidelines had been misscored. The Board applied for leave to appeal in this Court, which we granted.⁵ Soon thereafter, this Court issued its opinion in *In re Parole of Haeger*, 294 Mich App 549; 813 NW2d 313 (2011), holding in pertinent part that in that case the Board erred in granting a prisoner parole where the Board made its decision "in the absence of evidence that [the prisoner] had participated in a psychological or psychiatric evaluation." *Id.* at 577.

In compliance with *Haeger*, and while the appeal was still pending, the Board requested preparation of a Qualified Mental Health Professional (QMHP) evaluation report regarding Torres. The social worker who prepared the report, Eric Pressel, did so after meeting once with Torres. While acknowledging the assessments that indicated that Torres was at a low risk of reoffending, Pressel advised that it was "impossible to predict how [Torres] would behave give[n] a similar opportunity to the one that presented itself when these offense[s] were committed." Like Tolsma's report, Pressel's report contains several disturbing admissions by Torres, including the admission that he stopped having sex with his daughter and began having sex with his son because "he did not feel it was as bad because his son was not his biological child." Torres expressed concern with the frequency of sexual relations with his wife, and "added that as his children were already at his home they were a convenient means to sexual satisfaction." Pressel stated that it was "unclear to what degree Mr. Torres understands how his behavior has affected his victims and likely continues to affect them to this day."

The Board thereafter rescinded Torres's parole as a result of the QMHP report and moved to dismiss its appeal. This Court granted the Board's motion and dismissed its appeal.⁶ Torres thereafter applied for leave to appeal this Court's order in the Supreme Court, but the Supreme Court denied Torres's application as moot. *In re Parole of Torres*, 492 Mich 867; 819 NW2d 890 (2012).

A second QMHP report for Torres was prepared in March 2014 by psychologist Edith Boswell. Again, the report was written after one interview with Torres. Boswell reported that Torres again said that he assaulted the children because his wife "was not giving him the sex he needed at the time." Torres stated that did not think violating his children was "as bad as going outside the home seeking sexual relief." Boswell wrote that Torres "continued to justify his actions stating he needed to have sex and the children were there." Similar to Pressel, Boswell acknowledged the results of the various assessments, but noted that it was "impossible to predict how [Torres] would behave given a similar opportunity to the one that presented itself when the offense[s] originally occurred."

In March 2014, the Board granted Torres parole, finding reasonable assurance that he would not become a menace to society or to the public safety. The Board imposed several

⁵ *In re Parole of Torres*, unpublished order of the Court of Appeals, entered October 7, 2011 (Docket No. 303576).

⁶ *In re Parole of Torres*, unpublished order of the Court of Appeals, entered March 1, 2012 (Docket No. 303576).

conditions on Torres's parole, including the prohibition of any contact with minors, a requirement to complete sex offender therapy when referred by a field agent, and a requirement to submit to Global Positioning System monitoring.

II. ANALYSIS

Plaintiff asserts that the Board's grant of parole violated MCL 791.233(1)(a), which provides, "A prisoner shall not be given liberty on parole until the board has reasonable assurance, after consideration of all of the facts and circumstances, including the prisoner's mental and social attitude, that the prisoner will not become a menace to society or to the public safety." "Judicial review of the Board's decision to grant parole is limited to the abuse-of-discretion standard." *In re Parole of Elias*, 294 Mich App 507, 538; 811 NW2d 541 (2011). A trial court abuses its discretion when its "decision falls outside the range of reasonable and principled outcomes." *Id.* This Court is not permitted to "substitute its judgment for that of the Board." *Id.* at 538-539.

Plaintiff asserts that the Board granted Torres parole without Tolsma's therapy termination report's having been taken into account. The Board counters that it "was aware of" Tolsma's therapy termination report, calling attention to "case summary notes" that it has attached to its brief on appeal. These notes make reference to the therapy termination report but have unclear dates. On the first and last pages, the date "6/20/2014" is in the upper left corner, but "1/2014" is in the upper right corner. The remaining pages have "6/20/2014" in the upper left corner. At oral argument in the circuit court, plaintiff stated that the case summary report "was dated June 20th, which was generated [sic] three months after the decision to parole was made" The Board did not dispute this assertion. In addition, while the 2011 QMHP evaluation clearly took into account the therapy termination report, as evidenced by statements made in the 2011 QMHP report, the 2014 QMHP report made no reference to the therapy. Moreover, the Board in making the earlier decision to grant parole also clearly took into account the therapy termination report, as evidenced by the circuit court's fairly extensive discussions and findings regarding that report in conjunction with its reversal of the grant of parole. The present circuit court decision, by contrast, includes no detailed findings and merely states that the court "ha[s] reviewed the record below" and "finds that the Board's decision was not a clear abuse of discretion." Finally, the Board itself does not do an adequate job of explaining on appeal why this report did not indicate that parole should be denied. For example, at one point the Board states that "[a] sex offender therapy termination report is a professional evaluation but it is not a validated sex offender instrument" At another point the Board states that because "[t]here is no intention to place Torres in a home where there are children," and because Torres's pedophilia diagnosis in the therapy termination report was "[l]imited to [i]ncest," a grant of parole was reasonable. This conclusion is highly questionable considering that Torres at one point admitted that it was preferable to have sex with a child who was not biologically related to him.

Unlike the QMHP reports, which were prepared following single interviews between the authors and Torres, Tolsma wrote the therapy termination report after 47 sessions of sex offender therapy with Torres. Under these circumstances, Tolsma has valuable insight into whether Torres could be successfully paroled. We do acknowledge that the Board is not required to list every piece of evidence it considers in making its decisions. See *id.* at 547. Nevertheless, given

the highly relevant nature of the therapy report and given the colorable risk that the report was not considered or not adequately considered, we conclude, using our powers to “enter any judgment or order or grant further or different relief as the case may require,” MCR 7.216(A)(7), that the case should be remanded to the Board for a reevaluation of parole in which the therapy termination report and its implications are explicitly considered.

Plaintiff also argues that the Board erred in relying on the COMPAS and VASOR assessments, as well as the parole guidelines, because, as found by the circuit court in the first appeal, they were inaccurately assessed. Plaintiff contends that, pursuant to the doctrine of collateral estoppel, the circuit court’s findings on these matters are final and cannot be challenged because the Board voluntarily dismissed its appeal in Docket No. 303576. Again, after *Haeger* was decided, the Board requested a QMHP evaluation for Torres in order to comply with *Haeger*. After the QMHP report was prepared, the Board *rescinded Torres’s parole* and voluntarily dismissed its appeal. Torres’s attempt to appeal to the Michigan Supreme Court was unsuccessful due to mootness. Under these circumstances, the Board is not, as plaintiff puts it, “stuck” with the circuit court’s findings.

Given that the matter is being remanded for further consideration, we will not address plaintiff’s argument that the Board abused its discretion in granting parole.

Remanded for further consideration consistent with this opinion. We do not retain jurisdiction.

/s/ Patrick M. Meter
/s/ Jane M. Beckering